

THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MARK ANTHONY ROBINSON

Plaintiff

v.

FRANKLIN TENNIS, et al.,

Defendants

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3:11-CV-1724
(JUDGE MARIANI)

ORDER

AND NOW, THIS 20th DAY OF NOVEMBER, 2017, upon review for clear error or manifest injustice of Magistrate Judge Carlson's Report and Recommendation (Doc. 158) recommending that the Court schedule the above-captioned matter for trial, **IT IS HEREBY ORDERED THAT:**

1. The Report and Recommendation (Doc. 158) is **ADOPTED** for the reasons stated therein.
2. A jury trial on Plaintiff's Eighth Amendment excessive force claim against Defendants Sutton, Heverly, Best, and Davis, arising out of an October 2010 cell extraction, will commence in this matter on **Monday, August 27, 2018 at 9:30 a.m.** at the William J. Nealon Federal Building, Scranton, Pa. in a courtroom to be designated by the Clerk of Court. The parties can obtain information on courtroom assignments by contacting the Clerk's office the Friday before the scheduled appearance.

3. At least twenty-one (21) calendar days prior to the trial, the parties shall confer for the purpose of attempting to enter into agreements with respect to the subjects referred to in FED. R. CIV. P.16 and to discuss settlement of the action.
 - a. It shall be the duty of counsel for the defendants to take the initiative in holding such a conference and initiating discussion concerning settlement and to report to the court the results of efforts to arrive at settlement.
 - b. At the conference all exhibits which any party intends to introduce at trial whether on the case in chief or in rebuttal shall be examined, numbered and listed. Only exhibits so listed shall be offered in evidence at the trial, except for good cause shown. The parties shall attempt in good faith to agree as to the authenticity and admissibility of such exhibits insofar as possible and note an objection to any not so agreed upon.
 - c. At the conference, lists of potential witnesses shall be exchanged, which shall include the name, address, and telephone number of each witness, separately identifying those the party expects to present and those it may call if the need arises, as well as the designation of those witnesses whose testimony the party expects to present by deposition and, if not taken stenographically, a transcript of the pertinent parts of the deposition.

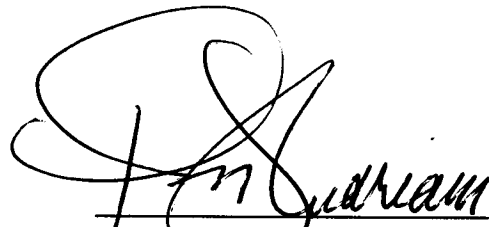
- d. Counsel shall attempt in good faith to agree insofar as possible upon a comprehensive written statement of all undisputed facts, which statement shall be included in Plaintiff's pretrial memorandum.
- 4. The parties shall file a pretrial memorandum fourteen (14) business days before the trial.
- 5. Motions in limine with supporting briefs shall be filed on or before the forty-fifth (45th) day before trial. No party, without leave of Court for compelling reasons shown, shall file more than five (5) motions in limine, including subparts. If a party chooses to file one or more motions in limine, each motion shall be narrowly tailored, address a single evidentiary issue, and be filed separately. No omnibus motions will be considered by the Court
- 6. Trial briefs shall be submitted five (5) business days before trial and shall conform to the requirements of M.D. Pa. Local Rule 39.7.
- 7. To the extent that the parties wish the Court to consider requests to instruct the jury and/or a requested verdict form, the following procedure shall be followed:
 - a. Within fourteen (14) days before trial, the parties shall meet and prepare a joint statement of the law that they agree is applicable to the matters at trial, in the form of instructions to the jury. Counsel shall likewise prepare a proposed verdict form that incorporates their proposed jury instructions

in a manner that facilitates the jury's determinations of all relevant issues of fact consistent with the proposed instructions.

- b. In all cases, parties shall follow the Model Civil Jury Instructions for District Courts of the Third Circuit. In cases where the Third Circuit has not promulgated instructions, the parties may base their instructions upon the most recent edition of (1) LEONARD SAND, JOHN SIFFERT, WALTER LOUGHLIN, STEVEN REISS & NANCY BATTERMAN, MODERN FEDERAL JURY INSTRUCTIONS, (2) KEVIN O'MALLEY, JAY GREINIG & WILLIAM LEE, FEDERAL JURY PRACTICE AND INSTRUCTIONS, and/or (3) jury instructions for the Commonwealth of Pennsylvania, in such areas where Pennsylvania law applies. If the plaintiff does not have access to these materials, he may use others.
 - c. Only when the publications listed in section 7(b), above, do not provide sufficient guidance to the law at issue may the instructions of other Circuit courts and/or relevant case law be used.
 - d. The aforementioned requests to instruct the jury and proposed verdict form shall be submitted no later than seven (7) business days before trial and shall conform to the requirements of M.D. Pa. Local Rule 51.1.
8. Voir dire questions shall be submitted seven (7) business days before trial.
9. In accordance with the Local Rules, the parties are to pre-mark all exhibits, including any type of demonstrative or photographic evidence, to be introduced at

trial. Each party offering written exhibits must provide the Court with two (2) copies of those exhibits in loose-leaf binders. In addition, each party must provide the Court with one (1) electronic copy of all written exhibits for use in connection with the Jury Evidence Recording System in either a CD or flash drive, in Adobe format. The plaintiff, if proceeding *pro se*, is exempted from this requirement.

10. If a settlement has been agreed upon after 5:00 p.m. on the last business day or the weekend preceding the commencement of trial, counsel should notify the Courtroom Deputy, Judith Malave, at judith_malave@pamd.uscourts.gov, and thereafter file a letter with the Court on CM-ECF.
11. Unless otherwise ordered by the Court, the following trial schedule will be maintained: Each morning session will commence at 9:30 a.m. and end at 12:30 p.m. Each afternoon session will commence at 1:30 p.m. and end at 5:00 p.m.
12. Any request to have the jury polled must be made before the Court enters judgment and excuses the jury.


Robert D. Mariani
United States District Judge